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SIPDIS

SENSITIVE

STATE FOR EUR/ERA, EB/TRA, AND INL
STATE PLEASE PASS DHS FOR U/S HUTCHINSON, A/S VERDERY, AND
CLAYTON
DOJ FOR SWARTZ AND BURROWS

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SUBJECT: DHS U/S HUTCHINSON'S OCT 1 MEETING WITH EXTERNAL
RELATIONS DG LANDABURU

Sensitive but unclassified, entire text.

Summary

1. (SBU) DHS Undersecretary for Border and Transportation Security Asa Hutchinson met External Relations Director General Eneko Landaburu October 1 in Brussels. Hutchinson told Landaburu that the EU and U.S. need to stand shoulder to shoulder even when we do not agree to show we are working together to overcome differences. Landaburu agreed with Hutchinson that more communication with European and U.S. publics on Homeland Security was important but warned that the two sides should not paper over real disagreements in joint appearances. Hutchinson noted that DHS was working on longer term projects like an international trusted traveler program. Landaburu expressed his appreciation for U.S. efforts to raise awareness of the US-VISIT program with Europeans but noted skepticism over the US VISIT system and welcomed the roll out of "Secure Flight" before cautioning that the Commission would have to review the program. Landaburu noted that the Commission proposed a paper in ICAO on PNR and Hutchinson agreed that ICAO should be considered as a place to discuss global standards for transfer of PNR. Hutchinson noted DHS's satisfaction with the current U.S.-EU agreement. The EU side welcomed the postponement of the October 2004 deadline for including biometric data in passports but asked for additional time. Hutchinson agreed to look into the appointment of a "trusted third party" to review international PNR transfers currently under discussion between the U.S. and European Commission. Landaburu thanked the U.S. for arranging an informational meeting with EU countries not participating in the Visa Waiver Program.

Action items coming out of the meeting included:

--- U/S Hutchinson committed that the U.S. would discuss the results of the November test of "Secure Flight" with EU officials.

--- U/S Hutchinson agreed to look into the appointment of a "trusted third party" to review international PNR transfers under discussion between the U.S. and European Commission and to review what other loose ends remain before full compliance with the U.S.-EU PNR agreements is possible, including the finalization of a sensitive data list that the Commission owes the U.S. End Summary.

Joint Communications Strategy

2. (SBU) Hutchinson told Landaburu he appreciated participating in the Hague Justice Ministerial and he had added Brussels to his trip to strengthen coordination with the EU. He hoped that the U.S. and EU could begin to develop initiatives together as well as communicate jointly to publics as a part of this initiative. The U.S. and EU together would be more effective addressing security concerns. Landaburu said he appreciated Hutchinson's efforts at building ties with his European counterparts. The EU was currently stressing a member state driven security policy, and the Commission was involved in this process. Still Landaburu believed that Hutchinson would find strong partners with JHA DG Faull and TREN DG Lamoureux, as well as the member states. A frank U.S.-EU Policy Dialogue on Border and Transport Security (PDBTS) would be necessary on the many security initiatives DHS was contemplating. Landaburu added that the EU needed to balance the need for increased security with citizens' rights to privacy. European public opinion as part of a global trend had not been keen on the security changes developing in the United States. Landaburu added that he did not want to use a joint press conference with language constructed to paper over U.S.-EU differences to give arguments to those that do not support needed security enhancements. Hutchinson agreed that both sides needed to be realistic. The U.S. and EU could work together in some areas and be honest about those areas where they disagreed.

US VISIT

13. (SBU) Hutchinson noted that post-Madrid the pressure for strengthened immigration controls in Europe seemed to be growing. The U.S. had adopted the US VISIT system to collect biometric data on visitors more quickly than had the EU, but he believed that the EU would adopt a similar system. The U.S. would serve as a lightening rod for criticism, until such systems came to be commonplace. Hutchinson understood this role. He said DHS was working to ensure the US VISIT system ran well. An important next step would be development of an internationally recognized trusted traveler system that would allow publics to see that the technology also facilitated travel.

14. (SBU) Landaburu said he was grateful for Hutchinson's efforts to raise awareness of the US VISIT program in Europe, thereby "answering" Commissioner Patten and Vitorino's September 8 letter to Secretaries Powell and Ridge on the subject. While, in principle, the Commission had no objection to the enrolling of Visa Waiver travelers in US VISIT, whether the policy will create a backlash among EU travelers depends in large part on how DHS implements the system. Landaburu added that having to submit to a finger scan would be a shock to some. The Commission had already received complaints from European travelers over treatment at U.S. borders. Landaburu said he had to wait about an hour at immigration at Dulles earlier in the week. EU Consumer groups remain skeptical of how DHS safeguards the data it collects.

15. (SBU) Hutchinson said he was concerned about European skepticism, and bad stories about inspector performance would make implementation more difficult. DHS wanted to be responsive. It had already made changes by training inspectors and giving them more discretion. While a zero-tolerance policy for minor infractions had been implemented at the border following the 9/11 attacks, DHS realized that this had gone too far and reversed the decision.

"Secure Flight"

16. (SBU) Hutchinson noted the recent roll out of the privacy impact assessment on the "Secure Flight" program. The Computer Assisted Passenger Prescreening Program (CAPPS II) had created significant controversy in Europe. DHS had been responsive to those concerns with "Secure Flight". The prescreening function had been adjusted dramatically in the modification of the CAPPS II system to create "secure flight". The key was to create a better mechanism to compare passenger names against a terrorist watch list. In "Secure Flight" a commercial database would not necessarily be used.

17. (SBU) Landaburu noted that the EU had concerns with the design of CAPPS II and appreciated the information the Commission had received from the U.S. on "Secure Flight". The modifications were positive, but the Commission will likely need additional information. Landaburu asked whether the system would definitely use European sourced PNR for domestic flights and how exactly data collected for "Secure Flight" would be used. Hutchinson told Landaburu that the "Secure Flight" test would take place in November, European sourced historical PNR data from June 2004 would be used as it would be impossible to determine which data was not 'domestic', and that DHS would discuss the results of the test with the Commission. All interested parties would have an opportunity to comment following the test. (Comment: USEU previously passed the DHS Privacy Notices on the "Secure Flight" test to the Commission 9/30)

PNR in ICAO

18. (SBU) Landaburu asked Hutchinson his views on developing a global standard on international transfer of PNR, noting that European travel agents were asking for a standard out of fear that proliferation of PNR requests from governments will raise the cost of traveling. The EU would seek a better definition of PNR within an ICAO framework. Hutchinson noted that he saw ICAO examination of PNR as a benefit to aviation security but stated that the U.S. is satisfied with the current US-EU agreement on PNR. (Comment: USEU passed the Commission Paper on developing a PNR standard in ICAO to Washington Agencies 9/23).

APIS

19. (SBU) Landaburu added that DHS Assistant Secretary Verdery spoke at the September SLCG on the development of a regulation requiring airlines to transfer APIS data to DHS/CBP before a flight departs. The EU wanted to look at

the implications of this information. The Commission's initial reaction was that such a requirement would complicate preparations and timing for U.S.-bound flights. Hutchinson confirmed that the U.S. was considering the change. He noted that currently, CBP received flight manifest data 15 minutes after a U.S.-bound flight departed. Some passenger data was available earlier, but a terrorist could escape a pre-takeoff check by arriving at the last minute. Some way was needed to correct the last-minute problem. It could be a matter of educating passengers to provide their data earlier without necessarily a longer wait at the airport. DHS is looking at requiring manifest data 60 minutes prior to takeoff to enable a check to be done before departure, but airlines have already told DHS that a 60-minute rule would require that a plane's door be shut 75 minutes prior to departure. Landaburu noted that such a change would cause disruptions to passengers arriving at an airport from connecting flights. Hutchinson noted the problem and added that DHS is looking at implications and gathering more information.

Biometric Passport Deadline -----

10. (SBU) RELEX Director Richard Wright said the EU was happy about the one-year extension until October 26, 2005 of the law mandating inclusion of biometric data in passports, but that a year would not be sufficient. Hutchinson noted that the Congressional deadline was firm, calling it "political gamesmanship." As the deadline grew nearer, U.S.-EU discussions would continue. Hutchinson hoped that both sides could work hard to meet the deadline. Wright suggested that the EU and U.S. could work jointly on the matter adding that the Community had 25 administrations to manage in this regard. Hutchinson added that the U.S. was testing biometric passport readers with European participation. Working together, this effort sends a good message.

Trusted Third Party -----

11. (SBU) Wright added that DHS A/S Verdery had also mentioned onward transfers of PNR data and the need to come up with a "trusted third party" to oversee those transfers. Wright noted that with the court case undecided, the U.S. and Commission remained under the spotlight. DHS Advisor Maria Clayton noted the U.S. was still discussing the issue internally. The DHS Privacy office would conduct the joint review. Hutchinson added that he would look into the issue and asked whether the delay in appointing the trusted third party would have any affect on the Parliament ECJ case against the PNR agreements. U.S. Unit Head Gunnar Weigand said he could not assess the affect the delay would have, but any irregularity in implementation would add to the Commission's vulnerability before its opponents. Clayton noted that to date, there have been no foreign transfers of PNR data. She added that the U.S. was also seeking the list of sensitive data to be filtered from PNR records from the Commission.

Visa Waiver -----

12. (SBU) Landaburu closed by welcoming the U.S. initiative setting up an October 18 meeting of EU countries not participating in the visa waiver program. Hutchinson replied that he hoped the meeting would help the non-VWP countries' to understand the requirements they must meet to join the program. He told Landaburu that he understood the non-VWP countries' requests created a problem for the EU, and that he hoped the countries fully understood the criteria for membership and could develop a plan for how our requirements could be met.

Scott